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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10 **(HON. BARRY T. MOSKOWITZ)**

11 **GURDEV SINGH,**

12 **Petitioner,**

13 **v.**

14 **MICHAEL CHERTOFF, et al.,**

15 **Respondents.**

Case No. 08CV0464-BTM (JMA)

COURT-ORDERED REPLY TO *EX*
***PARTE* REQUEST FOR STAY**

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19 Pending a ruling on the instant Petition, on August 13, 2008, Respondents filed an *ex parte* request for
20 a stay of 60 days "to permit Petitioner to request and obtain a bond review before an Immigration Judge"
21 pursuant to recent Ninth Circuit decisions. Government's *ex parte* Request to Hold Case in Abeyance And
22 Order Status Report ("Request") at 1. On August 15, 2008, this Court ordered Petitioner to respond to the
23 request by August 22, 2008.
24

25 Respondents argue that a detained deportee in Petitioner's circumstances is entitled to a bail hearing
26 before the immigration judge ("IJ") under Casas-Castrillon, ___ F.3d ___, 2008 WL 2902026 (9th Cir. July
27 25, 2008), and Prieto-Romero, ___ F.3d ___, 2008 WL 2853396 (9th Cir. July 25, 2008). Under these
28

1 decisions, deportees who were originally mandatorily detained under 8 U.S.C. § 1226(c) convert their
2 detention authority to § 1226(a) once a petition for review is filed and a stay of the removal order is in effect.
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4 See Casas-Castrillon, 2008 WL 2902026, at *4. As a result, formerly mandatorily detained deportees are
5 entitled to bond hearings at which the Government bears the burden to prove ineligibility for release. See id.
6 at *7. ("To avoid the constitutional concerns attending such an unreviewed detention, the Ninth Circuit held
7 that § 1226(a) must be construed as *requiring* the Attorney General to provide the alien with such a hearing.")
8 (citing Tijani v. Willis, 430 F.3d 1241, 1242 (9th Cir. 2005)). Respondents ask this Court to stay the current
9 case "to allow Petitioner to seek and obtain bond [sic] review before the Immigration Court." Request at 2.
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11 While reserving their rights and defenses during the stay, Request at 2, Respondents ask that the case be
12 held in abeyance. Petitioner maintains that he is entitled to release on his habeas corpus petition, as he faces
13 prolonged, past and future detention, despite the substantive nature of his challenge to removal. However,
14 in the interests of resolving this case expeditiously, Petitioner—with the same reservation of his rights and
15 previously asserted arguments—agrees that this Court should stay the current proceedings to permit a Casas
16 hearing before the IJ.
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19 Petitioner likewise agrees that this Court should hold a status hearing on this case at the end of the 60
20 days to assess the need for further proceedings.
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23 Respectfully submitted,

24 Dated: August 19, 2008

s/ James Fife

JAMES FIFE

Federal Defenders of San Diego, Inc.

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CERTIFICATE OF SERVICE

Counsel for Defendant certifies that the foregoing is true and accurate to the best information and belief,
and that a copy of the foregoing document has been caused to be delivered this day upon:

Courtesy Copy to Chambers

Copy to Assistant U.S. Attorney via ECF NEF

Copy to Petitioner

Dated: August 20, 2008

/s/ JAMES FIFE

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